

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BIDZIRK, LLC, DANIEL G. SCHMIDT,)
III, and JILL PATTERSON,)

Plaintiffs,)

v.)

PHILIP J. SMITH,)

Defendant.)

Civil Action No. 6:06-CV-00109-HMH

AFFIDAVIT OF KEVIN M. ELWELL

State of South Carolina
County of Greenville

CAME BEFORE ME, the undersigned officer duly authorized to administer oaths, Kevin M. Elwell, who, upon being sworn, deposes and states:

1.

My name is Kevin M. Elwell. I am over 18 years of age and am competent in all respects to testify to the matters asserted herein. I have personal knowledge of those matters and know them to be true.

2.

I am counsel for Plaintiffs in the above-captioned action. I served, via regular post, interrogatories, requests for production of documents and requests for admission on Defendant on July 28, 2006. Defendant failed to respond to these discovery requests. At Defendant's

deposition in December 2006, Defendant testified that, though he was aware of the discovery requests for more than 30 days, he had still not responded to Plaintiffs' discovery requests.

3.

On May 2, 2007, the parties appeared before the Court for a status conference. At that conference, the Court ordered Defendant to respond to Plaintiffs' discovery requests, which had at that time been pending for approximately nine months. Defendant served objections and responses on or about May 5, 2007, which responses were inadequate and incomplete.

4.

On May 14, 2007, I wrote to Defendant, outlining the specific deficiencies in his discovery responses, and demanding complete answers. On May 15, 2007, Defendant replied via email, explicitly refusing to provide any more information in discovery. On June 4, 2007, Plaintiffs filed their motion to compel discovery.

5.

My hourly rate for work in this case is \$150 per hour. The motion to compel filed on June 4 consumed approximately 4.5 hours of time, and my clients will be charged \$675.00 for my work. I have practiced law continuously since July 5, 1995. The instant case involves complex issues of trademark infringement, defamation and invasion of privacy. Fees charged in this case are reasonable based upon my experience and prevailing rates for similar work in South Carolina.

FURTHER AFFIANT SAYETH NAUGHT.



KEVIN M. ELWELL

Sworn to and subscribed
before me this 4th day
of June, 2007.



NOTARY PUBLIC

My Commission Expires
March 21, 2012

